

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1218**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On September 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 160829). Claimant filed a timely request for hearing. On October 19, 2016, ALJ Vincent conducted a hearing, and on October 21, 2016 issued Hearing Decision 16-UI-69655, affirming the Department's decision. On October 27, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Hearing Decision 16-UI-69655 is reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for further proceedings.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause" is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time. Leaving work with good cause also includes leaving work due to compelling family reasons. OAR 471-030-0038(5)(g). "Compelling family reasons" include when the illness or disability of a member of the individual's immediate family necessitates care by another and the individual's employer does not accommodate the employee's request for time off. OAR 471-030-0038(1)(e). "A member of the individual's immediate family" includes minor children who are under the age of 18. OAR 471-030-0038(1)(f).

Claimant testified that he quit work when he did to move near his 37-year-old son in North Dakota to help him complete a drug treatment program required by his probation and avoid a probation violation and prison sentence if he failed to complete the program. Audio Record at 4:20 to 5:38. In Hearing Decision 16-UI-69655, the ALJ concluded that claimant left work without good cause under the general provisions of OAR 471-030-0038(4) because claimant did not face a grave situation such that a

reasonable person would leave work when he did “without continuing to redress [his concerns]” or first attempting to find work near his son. *Id.* The ALJ did not address whether claimant’s circumstances constituted a “compelling family reason.” We agree with the ALJ’s implicit conclusion that claimant did not quit work due to compelling family reasons under OAR 471-030-0038(1)(e) given that claimant’s son was not under the age of 18. However, the ALJ failed to conduct a full inquiry into the facts necessary for consideration of whether claimant quit work for similarly compelling reasons that constitute good cause under OAR 471-030-0038(4).

The ALJ should have inquired what specific types of assistance claimant intended to provide his son and with what frequency, and did the son have other resources that could provide the same assistance? Did the son have other close family members or friends who were available to help him? Did claimant think he could provide assistance that others could not? Could claimant have remained in Oregon and provided the same assistance? Did claimant seek work in North Dakota before quitting work? If so, what was the result of his work search? If not, why did he quit work when he did rather than attempting to secure a job in North Dakota first? Would claimant have been able to assist his son if claimant was unable to find work in North Dakota? What risk did claimant’s son face if he failed to complete his drug treatment program or other terms of his probation? What were the terms of the son’s probation, and how did claimant plan to improve his son’s compliance with those terms? What prison sentence did the son face if he failed to comply with his probation? Did the son have minor children who would be affected by the son having to complete a prison sentence? How long did claimant plan to remain in North Dakota? Did he ask the employer for time off work? If not, why not? Would the employer have accommodated a request for time off from claimant? If so, for how long? Had the son been diagnosed with drug addiction? Could claimant have taken family medical leave to assist his son with completing drug treatment? How long after claimant quit his job did he move to North Dakota? If claimant did not move immediately, why not?

Absent these inquiries, and any follow-up questions the ALJ deems it necessary to ask, it cannot be determined whether claimant had good cause to leave work under OAR 471-030-0038(4). ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of whether claimant quit work with good cause under OAR 471-030-0038(4), Hearing Decision 16-UI-69655 is reversed, and this matter is remanded for development of the record.

**DECISION:** Hearing Decision 16-UI-69655 is set aside, and this matter remanded for further proceedings consistent with this order.

J. S. Cromwell and D. P. Hettle;  
Susan Rossiter, not participating.

**DATE of Service:** November 14, 2016

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and

information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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